



## **MONTANA STATE HOSPITAL POLICY AND PROCEDURE**

### **ALLEGATIONS OF ABUSE OR NEGLECT**

**Effective Date:** November 17, 2004

**Policy #:** TX-17

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#### **I. PURPOSE:**

- A. To provide procedures for reporting, investigating, and following up when an allegation of patient abuse or neglect is made, or when other information is received indicating that patient abuse or neglect may have occurred.
- B. To provide procedures for reporting allegations to external agencies as required.

#### **II. POLICY:**

All patients have the right to be free from abuse or neglect as well as the fear of being abused or neglected. Allegations or information indicating that abuse or neglect may have occurred will be thoroughly and promptly investigated with appropriate follow-up action taken.

All Hospital employees have an obligation to protect patients, prevent abuse or neglect from occurring, and to report any and all information concerning occurrences where abuse or neglect may have occurred.

The Hospital recognizes that allegations of abuse or neglect may be the product of the symptoms of a person's mental illness, may be a reaction to restrictions placed upon an individual, or a mistaken interpretation of information. The Hospital also recognizes that persons with mental illness are vulnerable and are at risk for abuse or neglect. Investigation procedures will focus on determining facts and providing hospital managers and supervisors with the best possible information on which to base actions to protect patients and employees who may be the subject of allegations that prove to be untrue.

Abuse of patients, either verbal, physical or sexual, or by exploitation or neglect, is not tolerated and is considered grounds for disciplinary action up to and including termination. Retaliation, discrimination, or coercion against patients, employees, or others who report abuse or neglect is also not tolerated and is considered grounds for disciplinary action up to and including termination.

The Hospital recognizes that abuse or neglect may occur unintentionally. The fact that it was unintended does not diminish the fact that it occurred.

It may be confirmed that abuse or neglect occurred even though there may be no obvious evidence that a patient suffered harm. This risk of being harmed is sufficient to conclude

that abuse or neglect occurred. The extent of the harm or risk of harm will be considered in determining the appropriate level of employee discipline or corrective action to take place when abuse or neglect is confirmed.

Other agencies and organizations may also have obligations to investigate allegations of abuse or neglect. These include the Mental Disabilities Board of Visitors, the Montana Advocacy Program, the DPHHS Quality Assurance Bureau, and local, state, and federal law enforcement agencies. Montana State Hospital (MSH) will cooperate and coordinate investigation procedures with these or other agencies as requested.

Patients who are victims of abuse or neglect will be provided counseling and support directed at re-establishing therapeutic relationships and addressing the impact of the abuse or neglect on the individual.

### III. DEFINITIONS:

- A. Abuse – Any willful infliction of injury, unreasonable confinement, intimidation, or punishment, with resulting physical harm, pain, or mental anguish. This also includes the deprivation by an individual, including a caretaker, of goods or services necessary to attain or maintain physical, mental and psychosocial well being. This presumes that instances of abuse of any patient, even an individual in a coma, may cause physical harm, or pain, or mental anguish. The use of seclusion or restraint as a form of punishment or in any other manner, which is inconsistent with the hospital's policy, constitutes abuse.
- B. Neglect – The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness. Examples include, but are not limited to, deprivation of food, shelter, appropriate clothing or nursing care and other services, failure to follow prescribed plan of care and treatment, and failure to respond to a resident in an emergency situation by indifference, carelessness or intention.

#### Types of Abuse or Neglect

1. Abandonment – The desertion of a patient by a staff member who has responsibility for providing care and resulting in harm or the risk of harm occurring to the patient. Examples include leaving a patient unattended who requires constant supervision or care.
2. Abuse, emotional or psychological – An act which results, or has the potential to result, in mental impairment of a patient's intellectual or psychological functioning. Examples include, but are not limited to, humiliation, harassment, imitating or mocking behavior, inappropriate threats of punishment or deprivation, use of derogatory nicknames, establishing relationships with patients involving a focus or purpose other than accepted therapeutic practice.

3. Abuse, physical – An act that results, or has the potential to result in death, pain, temporary or permanent disfigurement, or impairment of any bodily organ or function. Examples include, but are not limited to, rough handling, hitting, slapping, pinching, pushing, shoving, kicking, and controlling behavior through corporal punishment.
  4. Abuse, sexual – An act which defies the sexual integrity of a patient through gestures, verbal and/or physical actions. Examples include, but are not limited to, verbal or physical sexual harassment such as inappropriate touching of private body parts, kissing, fondling, intercourse, or sexually offensive language, jokes and gestures, sexual coercion, or sexual assault.
  5. Abuse, verbal – The use of oral, written or gestured language that willfully includes disparaging and derogatory terms to patients or their families, or within their hearing distance, regardless of their age, ability to comprehend or disability. Examples of verbal abuse include, but are not limited to, tone of voice, such as yelling, screaming or arguing; harassment, threats of harm; saying things to frighten a patient, such as telling a patient he/she will never be able to see his/her family again or he/she will never be able to leave the hospital.
  6. Financial or Material Exploitation – Illegal or improper use of a patient's funds, property, or assets without informed consent and resulting in monetary, personal, or other benefit, gain, or profit for the perpetrator, or monetary or personal loss by the patient.
  7. Medical Neglect – Failure to provide care for existing medical problems. Examples include: Not taking action on medical problems, prescribed treatment, or therapies; not calling a physician when necessary; failure to monitor for adverse drug reactions.
  8. Misappropriation of personal property – The deliberate misplacement, exploitation or wrongful, temporary or permanent use of a patient belongings or personal property located within or outside of the facility. Examples include, but are not limited to, inappropriate use, disposal or mishandling of personal funds, real estate, automobiles, clothing and other belongings, entering into financial transactions with patients, and trading articles with patients.
- C. Seclusion – The separation of a patient from other patients or from his/her room or confinement to his/her room (with or without roommates) against the patient's will. If the patient is receiving emergency short-term monitored separation due to temporary behavioral symptoms (such as a brief catastrophic reaction or combative or aggressive behavior which pose a threat to the patient, other patients, or staff) the use of such seclusion will be governed by the hospital policy *Use of Seclusion and Restraint Interventions*.

- D. Allegations of a severe nature – include but not limited to, witnessed or evidence of physical or sexual abuse and/or situations where preliminary evidence indicates possible physical or sexual abuse of a criminal nature.
- E. Reporting Nurse or Supervisor – The registered nurse or supervisor to whom the allegation of abuse is first reported.
- F. Investigator – Hospital employees trained in the techniques and processes necessary to conduct thorough investigations.
- G. Investigation Committee – A Committee made up of two or more of the individuals in the following positions: Hospital Administrator, Human Resources Director, Medical Director, Director of Nursing Services, and Director of Quality Improvement.

#### IV. RESPONSIBILITIES:

- A. All hospital employees are responsible for:
  - 1. Taking action to protect patients from abuse or neglect and reporting information that abuse or neglect occurred or may have occurred.
  - 2. Immediately reporting and completing incident reports to document all incidents of patient injury, suspicious bruising, or patient abuse which they have witnessed or have knowledge of. This information is to be conveyed immediately to a Team Leader or registered nurse assigned to the unit where the patient resides, or to any nursing supervisor.
  - 3. Immediately reporting any information or knowledge concerning possible patient abuse or neglect to the Hospital Administrator. In the event the Administrator cannot be reached, a message should be left on his/her voice mail (693-7010) and notification should be provided to the Director of Nursing, Medical Director, or Director of Quality Improvement.
  - 4. Cooperating fully with any investigations by providing complete, truthful, and forthright information to investigators.
  - 5. Participating in inservice training opportunities on issues relative to abuse prohibition practices.

*Information concerning patient abuse may come to the attention of staff in many forms. Some examples are:*

- 1. Direct observation of an incident;*
- 2. Third hand information reported by someone else;*
- 3. Statement from a patient;*
- 4. Report from a patient made after discharge;*

5. *Report from a family member;*
6. *Complaint made through the patient grievance process;*
7. *Evidence of bruising, abrasions, bone fractures, etc., for which the cause is unknown;*

*In many cases an employee becoming aware of such information may not conclude or believe abuse has occurred. However, that does not diminish the obligation to report the information to supervisory personnel immediately.*

B. Human Resources Department will:

1. Screen potential employees for a history of abuse, neglect, or mistreatment of patients by:
  - a. attempting to obtain information from previous and/or current employers;
  - b. checking with the appropriate licensing boards;
  - c. completing a criminal background check;
  - d. checking with the appropriate registries.
2. Report to Hospital Managers and Supervisors and the state nurse aide registry or licensing authorities any knowledge it has of any actions by a court of law which would indicate an employee is unfit for service.

C. Staff Development will:

1. Provide training to employees, through orientation and on-going sessions on issues related to abuse prohibition practices such as:
  - a. patient rights;
  - b. safety;
  - c. employee ethics and rules of conduct;
  - d. how to recognize signs of burnout, frustration and stress that may lead to abuse;
  - e. what constitutes abuse, neglect and misappropriation of patient property;
  - f. appropriate interventions to deal with aggressive and/or catastrophic reactions of patients;
  - g. how staff should report their knowledge relative to allegations without fear of reprisal.
2. Coordinate with the Director of Nursing Services to provide periodic training to registered nurses on their role in conducting a preliminary review of the alleged abuse situation.

D. Team Leaders will:

1. Coordinate with the nursing supervisors on the unit to:
  - a. assess care plan and monitor patients with a history of aggressive or difficult behaviors;
  - b. ensure staffing on the unit is appropriate to meet the needs of the patients;
  - c. ensure appropriate supervision of staff;
  - d. ensure staff are trained and informed of patient care needs;
  - e. review all incident reports to identify events, such as suspicious bruising of patients, occurrences, patterns and trends which may constitute abuse and to ensure proper follow-up of all incidents;
  - f. as appropriate to the circumstances, notify family members, guardians, or other individuals of the incident.

E. Reporting Nurse or Supervisor will:

1. Contact the Director of Nursing Services or a nurse supervisor. In the event the Director of Nursing Services or a nurse supervisor cannot be contacted, the Reporting Nurse will contact the Director of Quality Improvement.
2. Conduct a preliminary review, in consultation with the nurse supervisor, of the situation to establish circumstances and potential severity of the allegation.
3. Assess the need to protect patient from harm or intimidation during an investigation, taking steps as necessary to ensure all patients are safe from any harm. Such steps may include moving the patient to another unit or temporarily reassigning staff to another unit.
4. When applicable, secure the incident scene and take physical control of all relevant documents and separate potential witnesses pending the arrival of an investigator. Take photographs of the scene, apparent injuries to the patient, or any other evidence when possible.
5. Ensure the completion of an incident report when the allegation involves physical abuse.
6. Notify the physician or psychiatrist of any allegation of physical abuse to arrange for an examination of the patient.
7. Ensure the Hospital Administrator has been informed of the incident and provide information concerning the circumstances and potential severity of the allegation, and action already taken.

F. Director of Nursing Service or Nurse Supervisor will:

1. Coordinate and oversee fact-finding investigations in instances when patient abuse is alleged or may have occurred.
2. Assess the nature of the allegation and appropriate steps for an investigation to determine the facts.

3. Maintain documentation describing the ongoing status of the investigation with regard to any allegation of abuse, neglect, or incident where abuse or neglect may have occurred that includes:
    - a) a description of the allegation or incident that includes the names of the patient(s) who is the subject of the investigation, names of staff against whom the allegation is made, and the names of any witnesses who may have information about the incident;
    - b) a description of the rationale for conducting the investigation with either in-house or outside personnel;
    - c) details of the process of the investigation of each allegation of abuse or neglect; and
    - d) details of corrective action taken.
  4. Inform the employee(s) accused of abuse that an allegation has been made and determine whether the employee(s) should be reassigned, temporarily suspended, or subject to other action necessary to protect all involved.
  5. Assign and provide direction to an investigator to collect all available evidence.
  6. Maintain documentation on an ongoing basis describing the status of the investigation.
  7. Confer with the Hospital Administrator concerning the allegation of abuse and actions taken.
- G. Physician or Psychiatrist will examine the patient who may be the victim of physical abuse within two hours of notification and document in the medical record any noted injuries.
- H. Investigator will:
1. Begin gathering evidence immediately after receiving the investigative assignment. Work normally assigned to the investigator may be set aside or reassigned in consultation with the employee's supervisor.
  2. Notify the Director of Nursing and the Hospital Administrator of any assistance needed or delays encountered in completion of the investigation.
  3. Have the authority to work beyond regular scheduled hours or make schedule adjustments in order to complete an investigation in a prompt and thorough manner.
  4. Have the authority to authorize overtime pay, comp-time, or relief needed to ensure prompt completion of an investigation.
  5. Use any reasonable method to gather evidence including taking of photographs (patients may be photographed only with appropriate consent), or record witness statements with the knowledge and consent of the witness.

6. Prepare an evidentiary summary for presentation to the appropriate department director of the Investigation Committee as soon as possible upon completion of the investigation.

I. Investigation Committee will:

1. Review all evidence and statements to determine whether abuse occurred.
2. Prepare a written summary of the allegation and collected data for the accused employee; which includes all allegations against the employee(s), the nature of the discipline being contemplated, any evidence supporting the allegation, the date, place, and time the committee will be available to consider any testimony, statement, physical evidence, or documentation the employee(s) may wish to present on their behalf.
3. Submit a written report and recommendations to the director of the Hospital department to which the accused employee is assigned.

J. The Hospital Administrator or designee will:

1. Notify local authorities if the alleged abuse might constitute a misdemeanor or criminal offense.
2. Notify the Mental Disabilities Board of Visitors of the allegation by the end of the next business day.
3. Make other notifications as appropriate.
4. Ensure the investigation is carried out promptly and thoroughly with full cooperation of all hospital staff.
5. Ensure staff who report abuse or neglect receive adequate support and encouragement and are free from retribution or reprisal.
6. Ensure appropriate counseling and support are provided to the victim(s).
7. Ensure the hospital's investigation is coordinated with any other investigations that may take place, e.g., Law Enforcement, Mental Disability Board of Visitors, DPHHS Quality Assurance Division, Montana Advocacy Program, Center for Medicare and Medicaid Services.

V. **PROCEDURE:**

Initial Notification

- A. Employees who witness or have knowledge of patient abuse shall immediately report it to a registered nurse assigned to the program where the patient resides or to a nurse supervisor. If for some reason, the employee believes they cannot or should not inform a registered nurse or a nursing supervisor, the employee may contact the Hospital Administrator, Director of Nursing, Director of Quality Improvement, Medical Director, or Unit Psychiatrist.
- B. The Hospital Administrator is to be informed immediately when information arises to indicate that patient abuse may have occurred. This may be done

directly by the employee when they initially observe a situation or otherwise gain knowledge that abuse may have occurred, or it may be done by person initially informed by the employee. When the Hospital Administrator cannot be reached, a message is to be left on his/her voice mail (693-7010) and the Director of Nursing, Medical Director, or Director of Quality Improvement are to be informed.

- C. Documentation in the form of incident reports, progress notes, or other written statements are to be completed and provided to a Nursing Supervisor or Director of Nursing.

Review and Investigation

- A. The investigation process begins when a Nursing Supervisor, the Director of Nursing, the Hospital Administrator, the Medical Director, or the Director of Quality Improvement is informed or reaches a conclusion that possible abuse or neglect may have taken place. This triggers a process for taking action to protect patients and employees and collecting information to help determine facts that will either substantiate a finding that abuse or neglect took place or lead to the conclusion that it did not.
- B. The Director of Nursing or a Nursing Supervisor will take a lead role in coordinating the fact-finding investigation. This process involves gathering relevant information and evidence that will allow supervisory personnel to conclude whether abuse or neglect occurred, and if it occurred, why it happened and who was responsible.

Depending on the nature of the information received by the Director of Nursing or Nursing Supervisor, the investigation process will take different forms. The following are the steps that will normally be followed:

1. The Director of Nursing or Nursing Supervisor will conduct a preliminary review of the situation to determine:
  - a. the nature of the allegation;
  - b. identity of patient(s) who may have been a victim(s) or are at risk for being a victim(s);
  - c. physical and mental status of any potential victims;
  - d. identity of staff who may be responsible for abuse or neglect;
  - e. identify of possible witnesses, either staff, patients, family members, or visitors;
  - f. other evidence that will uncover facts that will lead to conclusions about what occurred.
2. When applicable, the incident scene will be secured and physical control will be maintained of relevant documents. Photographs or others records of

evidence or the patient's condition should be made. When appropriate, potential witnesses should be kept apart pending the arrival of an investigator.

3. If the allegation(s) involves physical abuse, an incident report must be completed by the reporting supervisor and the patient must be seen immediately by the attending physician/psychiatrist who must note any injuries in the medical record. Injuries must be described in detail noting size, shape, color, probable time of injury and, if possible, probable cause of injury. The reporting supervisor will contact the psychiatrist/physician to arrange for an examination of the patient.

If the allegation(s) involves sexual assault/rape refer to and follow MSH policy ER-01, *Allegation of Rape* (located in the Emergency Response section of Volume I of the MSH Policy Manuals).

4. The Director of Nursing Services or nurse supervisor will assign an investigator to collect all available evidence. The assignment of an investigator will occur as soon as possible. The assignment of the investigator will be executed with due consideration to ensure the investigator selected is someone who can effectively, fairly, and impartially gather evidence. When the allegation would constitute abuse of a severe nature, the investigator selected must come from a unit other than the unit on which the abuse was alleged to have occurred or from outside the hospital. The rationale for the selection of the investigator will be documented and maintained with other information about the investigation.
5. The investigation will proceed without unreasonable delay.
6. If at any point in the investigation, there is enough information to conclude that a particular employee (or group of employees) is accused of committing an act of abuse or neglect, they will be informed by the supervisor of their department of the accusation and asked to submit evidence for the investigation. A determination will be made at that time regarding whether to continue the employee in their current assignment, reassign the employee, suspend the employee with pay, or under certain circumstances, suspend the employee without pay.
7. The investigator will collect any physical, demonstrative, or documentary evidence which might be related to the incident. The investigator must also collect statements from:
  - a. the individual(s) bringing the allegation(s),
  - b. the alleged victim(s),
  - c. all other persons with knowledge or potential knowledge of the incident(s), and
  - d. the individual(s) accused of abuse or neglect.

8. If necessary, employees may be held beyond the end of their shift. An employee who refuses to provide a statement to the investigator will be subject to disciplinary action.
9. All physical, demonstrative, or documentary evidence must be properly stored and identified and must remain in the custody of the investigator who collected it until it can be forwarded to the Human Resources Director.
10. Upon completion of the investigation, the investigator will prepare an evidentiary summary for presentation to the evaluation committee.
11. Investigation procedures may be altered or adjusted to meet the particular circumstances of any case. The Director of Nursing or Nurse Supervisor will meet regularly with the assigned investigator to ensure the investigation proceeds promptly and thoroughly.

Investigation Findings

- A. At the conclusion of the investigation, the Investigation Committee (comprised of two or more of the following administrative staff members: Hospital Administrator, Human Resources Director, Medical Director, Director of Nursing Services, Director of Quality Improvement) will convene to review all available evidence and documentation. In order to ensure the committee can convene promptly, only two members need be present in order for the committee to take action, however additional participation is desirable. Members will be excluded if the allegations involve employees in the direct line of supervision or in order to avoid the appearance of other possible conflicts.
- B. The committee will consult with the investigator(s) regarding their interpretation of the evidence. When necessary, the committee may request additional statements. If the committee members unanimously conclude there is insufficient evidence to proceed, a written report will be prepared for the Division Administrator, or his/her designee.
- C. If the committee determines there is sufficient evidence to proceed, the Human Resources Director will prepare a written summary which must be forwarded to the accused employee(s) by registered mail. The summary will include notice of all allegations against the employee(s), the nature of the discipline being contemplated, and any evidence supporting the allegations. The summary must also inform the employee of the date, place, and time the committee will be available to hold a conference and consider any testimony, statements, physical evidence, or documentation the employee(s) may wish to present on their behalf. NOTE: Employees who are union members are entitled to representation from their bargaining unit at the conference

D. As soon as possible (ordinarily within 10 working days) after receiving all documentation, the investigation committee will submit a written report and recommendations to the accused employee(s) department director(s). The report shall contain a copy of the investigator evidentiary summary and a statement of the committee's determination as to whether or not the allegation(s) have been proven. The committee will not make a recommendation of appropriate discipline.

E. Determination/Action

1. After receiving the documentation referenced above, the department director(s), in consultation with the employee's immediate supervisor(s), will determine and implement appropriate disciplinary action. The Department Director will notify the Hospital Administrator of their decision.
2. The Team Leader and/or Nurse Manager will review the report of all allegations of abuse to make recommendations on staffing issues, training needs, care planning issues, environmental changes or other factors which may create a situation in which abuse, neglect and/or misappropriation of patient property is more likely to occur.

F. Special Consideration

1. If at any point in the process described in this policy, management determines there is reasonable evidence indicating possible patient abuse, an employee may be reassigned and/or suspended with or without pay until an investigation has been completed.
2. At any step of this process, if the alleged abuse might constitute a misdemeanor or criminal offense, the Hospital Administrator or designee, following notification of the Division Administrator, or designee, will notify local authorities.
3. The internal investigation and subsequent action by the hospital will continue even if law enforcement officials conduct an investigation of the incident. The Hospital will make every effort to cooperate and avoid compromising a law enforcement investigation.
4. An extension to any time limit identified in this policy may be granted by the Investigation Committee and/or Hospital Administrator when circumstances of the investigation so warrant. Such extensions will be documented.
5. Any employee who has been suspended or terminated has the right to appeal through established grievance procedures.

G. Reporting

1. In addition to the reporting required in the aforementioned, the Hospital Administrator, or designee, will notify the following, as required, in writing, the following:
  - a. Department of Public Health & Human Services
    1. Senior and Long Term Care Division, Adult Protective Services (if the victim is 60 years old or older or has a developmental disability)
    2. Quality Assurance Division
    3. Addictive and Mental Disorders Division Administrator
  - b. Mental Disabilities Board of Visitors
  - c. Montana Department of Justice, Criminal Investigation Bureau
  - d. Other agencies as appropriate
2. The written report (Attachment A) will be completed for all allegations of abuse and will include:
  - a. name, address, and age of the abused;
  - b. person responsible for the patient's care;
  - c. name and address of the person who is alleged to have abused, neglected or exploited the older person, if known;
  - d. date allegation reported;
  - e. date allegation occurred;
  - f. date investigation started and completed;
  - g. rationale for selection of the investigator(s)
  - h. details of the investigation process;
  - i. extent of the abuse, neglect or exploitation, including any evidence of previous injuries;
  - j. details of any corrective or disciplinary action taken;
  - k. agencies notified of investigation/results;
  - l. name and address of the person making the report.

VI. REFERENCES: MSH policies

- A. #ER-01, *Allegation of Rape*
- B. #SF-04, *Incident Response and Reporting*
- C. #TX-16, *Use of Seclusion & Restraint Interventions*
- D. #TX-12, *Patient Treatment Plan*
- E. #PR-03, *Patient Grievance Procedure*

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H. 53-21-102, 53-21-104, and 53-21-107 M.C.A.

**XII. ATTACHMENTS:** A. Resident Abuse/Neglect/Exploitation Reporting Form

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 Todd Thun Date  
 Director of Human Resources